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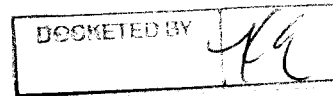
BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

SEP 19 2016



DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF
WOODRUFF WATER COMPANY, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER SERVICE IN
PINAL COUNTY, ARIZONA.

DOCKET NO. W-04264A-04-0438

IN THE MATTER OF THE APPLICATION OF
WOODRUFF UTILITY COMPANY, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE SEWER SERVICE IN
PINAL COUNTY, ARIZONA.

DOCKET NO. SW-04265A-04-0439

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY, AN ARIZONA
CORPORATION, TO EXTEND ITS EXISTING
CERTIFICATES OF CONVENIENCE AND
NECESSITY AT CASA GRANDE AND
COOLIDGE, PINAL COUNTY, ARIZONA.

DOCKET NO. W-01445A-04-0755

DECISION NO. 75745

ORDER EXTENDING TIME
DEADLINES CONTAINED IN
DECISION NOS. 68453 AND 72729

Open Meeting
September 7 and 8, 2016
Phoenix, Arizona

BY THE COMMISSION:

This case concerns a request from Woodruff Water Company, Inc. ("Woodruff Water") and Woodruff Utility Company, Inc. ("Woodruff Utility") (jointly "Companies") to modify Decision No. 68453 (February 2, 2006), as amended by Decision No. 72729 (January 6, 2012), by extending the deadlines for the Companies to file their rate case applications and for Woodruff Utility to file its next report describing progress toward the use of effluent for golf courses, ornamental lakes, and other aesthetic water features.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

Background:

1. In Decision No. 68453 (February 2, 2006), Woodruff Water was granted a Certificate of Convenience and Necessity ("CC&N") to provide water utility service, and Woodruff Utility was granted a CC&N to provide wastewater utility service, each for a 3,200-acre parcel located between Casa Grande and Coolidge, in Pinal County, that was to be developed as a master-planned subdivision known as Sandia ("Sandia parcel").¹

2. Decision No. 68453 found that Woodruff Water and Woodruff Utility were both owned by Pivotal Sandia, L.L.C. ("Pivotal Sandia"), which was ultimately controlled by the F. Francis Najafi Family Trust.² The Decision further found that Francis Najafi served as the sole director for each of the Companies. (Decision No. 68453 at 5 n.1.)

3. The Decision found that the Sandia parcel was being purchased from the Wuertz³ family, who had been using the Sandia parcel for agricultural purposes for a number of years and who had requested water and wastewater service from the Companies, thereby providing a mechanism to convert the Wuertz family's irrigation rights to Type 1 non-irrigation rights that could be used for a development. The Decision further found that Woodruff Water had commenced providing water utility service to the Wuertz family in approximately September 2004 to satisfy an Arizona Department of Water Resources ("ADWR") requirement for non-agricultural service to be provided for one year as a prerequisite to converting the irrigation rights. (Decision No. 68453 at 9.) Woodruff Water had expected to have the rights converted by September 2005. (*Id.*)

4. Decision No. 68453 required each of the Companies to file a rate application no later than three months following the fifth anniversary of the effective date of the Decision. (*Id.* at 26, 27, 32.) The Decision also required each of the Companies to file notice of having initiated service

¹ Decision No. 68453 also dealt with an Arizona Water Company ("AWC") application to extend its CC&N to include the Sandia parcel, an area known as Martin Ranch, and other surrounding parcels. (Decision No. 68453 at 5-6.) The Decision granted AWC's application as to Martin Ranch, but denied AWC's application as to the Sandia parcel and the other surrounding parcels. (*Id.* at 21, 28, 32-33.) Decision No. 68453 was appealed by AWC and ultimately affirmed by the Arizona Court of Appeals (*Arizona Water Co. v. Arizona Corp. Comm'n*, 217 Ariz. 652 (Ariz. Ct. App. 2008)).

² Decision No. 68453 found that Woodruff Water and Woodruff Utility were both owned by Pivotal Sandia, L.L.C., which was controlled by Pivotal Group X, L.L.C., which was controlled by the F. Francis Najafi Family Trust. (Decision No. 68453 at 5 n.1.)

³ The family's name was misspelled in the Decision as Wurtz.

1 within 30 days after initiating service to its first customer. (*Id.*) The Decision further required
2 Woodruff Utility to post a performance bond in the amount of \$250,000 no later than 15 days before
3 providing wastewater service to any customer and required that the performance bond be maintained
4 and copies of the performance bond filed annually, on the anniversary date of the initial filing, until
5 further order of the Commission or until 10 years had passed, whichever came first, at which time
6 Woodruff Utility could file an application for termination of the bonding requirement. (*Id.* at 31-32.)

7 5. On March 3, 2006, the Companies made a joint compliance filing including copies of
8 their tariffs and notice that Woodruff Water had commenced water service to its first customer on or
9 about September 1, 2004.⁴

10 6. Compliance filings made by the Companies in 2007 and 2008 reported that no effluent
11 had been produced or used in 2007 because construction on the wastewater treatment facility had not
12 yet begun; that Arizona Department of Environmental Quality (“ADEQ”) Certificates of Approval to
13 Construct (“ATCs”) had been obtained and extended for Woodruff Water’s water treatment facility
14 and water production plant, including storage tanks and booster pumps; that an ADEQ Aquifer
15 Protection Permit had been obtained for Woodruff Utility’s planned wastewater treatment facility;
16 and that three separate ADWR Certificates of Assured Water Supply, together covering the entire
17 Sandia parcel, had been obtained.

18 7. The Companies made no filings in 2009.

19 8. On January 20, 2010, Desert Troon Companies (“Desert Troon”) made a filing
20 updating the contact information for Woodruff Water and Woodruff Utility to that of Gary S.
21 Elbogen, General Counsel for Desert Troon. With the filing, Desert Troon included Amended and
22 Restated Articles of Incorporation for the Companies, which named Mr. Elbogen as the sole director
23 and incorporator for each, effective August 14, 2009.⁵ Also on January 20, 2010, Desert Troon filed
24 a letter stating that there had been no development of golf courses, ornamental lakes, or other water
25 features that would incorporate the use of effluent water.

26 9. On January 31, 2011, Desert Troon filed a letter stating that there had been no

27 ⁴ The Companies explained that the information concerning service to Woodruff Water’s first customer had previously
28 been provided during the evidentiary hearing for the case and cited to the hearing transcript.

⁵ The copies filed were virtually illegible.

1 development of golf courses, ornamental lakes, or other water features that would incorporate the use
2 of effluent water.

3 10. On May 31, 2011, Desert Troon filed two letters requesting, on behalf of the
4 Companies, that the compliance requirements of Decision No. 68453 be amended so that the
5 Companies would not be required to file rate applications until project development commenced.

6 11. On July 5, 2011, the Commission's Utilities Division ("Staff") filed a Memorandum
7 recommending that the due date for the rate case applications be extended to a date no later than five
8 years after commencement of service to the Companies' first customers and that the Companies file
9 notice in the docket within 15 days after commencing such service, with the notice indicating the date
10 that service began to the first customers.⁶

11 12. On July 11, 2011, a Procedural Order was issued requiring the Companies to file
12 specific information for use in determining whether extending the rate case filing deadlines for the
13 Companies would be in the public interest. The Procedural Order required Staff to review the
14 information filed by the Companies and to make a supplemental filing providing any revised or new
15 Staff recommendations in light of the information filed. The deadlines for the filings were
16 subsequently extended per the Companies' request.

17 13. On August 25, 2011, the Companies filed a Notice of Filing Additional Information in
18 Support of Request to Extend Compliance Deadline in Decision 68453, explaining the following:

19 (a) The Companies were still directly owned by the same entity, which was known
20 as Sandia 2009, LLC ("Sandia 2009") and had formerly been known as Pivotal Sandia, LLC.

21 (b) In August 2009, Pivotal Group X, LLC and Arizona PSPRS Trust, then the
22 owners of Sandia 2009, had assigned all of their respective member interests in Sandia 2009 to DT
23 Lifestyle, LLC ("DT Lifestyle")(formerly known as DTR1B, LLC). DT Lifestyle was owned and
24 controlled by DTR1, LLC, which was owned and controlled by Desert Troon Limited, LLC and
25 Arizona PSPRS Trust. With the change in control of Sandia 2009, new officers and directors had
26 been appointed for the Companies.

27 ⁶ Staff's Memorandum did not indicate that Woodruff Water was already providing service and did not provide any
28 additional information concerning the status of development in the Sandia parcel or any details regarding a change in
ownership.

1 (c) The Sandia parcel was owned under a beneficiary trust arrangement, with
2 various entities owned and controlled by the Wuertz family as the settlors of the trust and Sandia
3 2009 as the beneficiary of the trust. The trust agreement allowed for gradual takedowns of the Sandia
4 parcel by Sandia 2009, which was then entitled to request an immediate deed for conveyance of
5 approximately 22 percent of the Sandia parcel. The Sandia parcel was still occupied and farmed by
6 the Wuertz family.

7 (d) The Sandia parcel was still mostly undeveloped, although a fire station and
8 major arterial street had been constructed.

9 (e) Woodruff Water owned two established wells. Well No. 1 had complete
10 improvements including well head, pump assembly, piping, manifold, and small structures for the
11 pump and electrical service section and controls. Well No. 2 had been drilled and improved and was
12 ready to deliver water. Woodruff Water's system also had approximately 5,300 feet of distribution
13 line and four digital water meters serving customers.

14 (f) Woodruff Utility had no physical utility infrastructure, although engineering
15 design plans had been prepared for it.

16 (g) Woodruff Water had commenced water service to its first customer on or about
17 September 1, 2004, and had four residential water customers served by ¾" meters as of the filing.
18 The four customers were served from Well No. 1 via a distribution pipeline approximately one-half
19 mile long. Woodruff Water was charging its customers the rates authorized in the tariffs approved in
20 Decision No. 68453.

21 (h) Sandia 2009 intended to develop the Sandia parcel according to the original
22 vision under Sandia 2009's prior ownership, which was for a master-planned subdivision of
23 approximately 9,500 residential units along with commercial development, schools, parks, and a golf
24 course. Sandia 2009 intended to commence development when market conditions improved and
25 created demand for new housing in the area between Casa Grande and Coolidge. The Companies
26 expected to receive requests for new water and wastewater services in the next two to five years.⁷

27 _____
28 ⁷ In support, the Companies cited a March 2011 *Cromford Report* asserting that there were signs of stabilization in the Phoenix metropolitan area.

1 (i) The Companies believed that it would not be prudent to incur the costs of a
2 rate case at that time, when Woodruff Water had only four customers, and Woodruff Utility had no
3 customers. The Companies requested a five-year delay in the requirement to file a rate case
4 application.

5 (j) The Companies desired to retain their CC&Ns for the Sandia parcel because
6 Sandia 2009 intended to proceed with development as soon as the market created a demand for
7 residential housing in the area, Woodruff Water was serving four customers, and Woodruff Utility
8 was essential to Sandia 2009's plan to have integrated water and wastewater service for the
9 development.

10 14. On September 30, 2011, Staff filed a Memorandum asserting that Staff agreed with the
11 Companies that there were not enough customers to make rate applications meaningful at that time.
12 Staff stated that an extension of time was reasonable considering the facts in the matter and
13 recommended that the due dates for the Companies to file their rate applications be extended five
14 years from the date of a decision in the matter.

15 15. On January 16, 2012, in Decision No. 72729, the Commission extended the deadline
16 for filing of the Companies' permanent rate case applications to January 6, 2017. The Decision also
17 ordered that all other requirements of Decision No. 68453 remained in effect.

18 **Current Request and Recommendations:**

19 16. On February 3, 2016, Desert Troon, on behalf of Woodruff Utility, filed a letter
20 requesting that the requirement for Woodruff Utility to file reports regarding progress toward the use
21 of effluent be suspended until after project development commences or, in the alternative, for a
22 period of five years. Desert Troon stated that "there are no plans to develop the [Sandia] community
23 any time in the near future, nor will the facility become operational in the near future."

24 17. On July 8, 2016, Staff filed a memorandum stating that Staff had contacted Desert
25 Troon's Project Coordinator, who had confirmed that no additional customers were being served and
26 that there were no plans to develop the Sandia parcel for at least the next five years. Staff also
27 recounted discussing the Companies' rate case filing requirements with the Project Coordinator, who
28 asserted that the Companies desire for the rate case filings requirements to be extended for another

1 five years from the date of a decision in this matter. Staff recommended that the Commission extend
2 the due date for Woodruff Utility's next "progress toward use of effluent" report for five years from
3 the date of a decision in this matter and extend the filing deadline for the Companies' permanent rate
4 case applications to a date not more than five years after service is provided to the first customer.

5 **Resolution:**

6 18. Until development of the Sandia parcel has occurred, any reports filed by Woodruff
7 Utility concerning progress toward the use of effluent will be nonsubstantive and of no value to the
8 Commission. Thus, it is just and reasonable and in the public interest to suspend the requirement for
9 Woodruff Utility to file such reports until such time as development has commenced in the Sandia
10 parcel and Woodruff Utility has commenced providing wastewater service to its first customer.

11 19. Until development of the Sandia parcel has occurred, and service to new customers
12 has been provided by Woodruff Water for a significant period of time, a rate case application filed by
13 Woodruff Water would not provide meaningful information upon which to determine just and
14 reasonable rates for water service. Thus, the requirement for Woodruff Water to file a rate case
15 application should be extended until the date five years after Woodruff Water commences providing
16 water utility service to its first residential customer within a newly developed residential subdivision
17 in the Sandia parcel.

18 20. Until development of the Sandia parcel has occurred, and service to customers has
19 been provided by Woodruff Utility for a significant period of time, a rate case application filed by
20 Woodruff Utility would not provide meaningful information upon which to determine just and
21 reasonable rates for wastewater service. Thus, the requirement for Woodruff Utility to file a rate case
22 application should be extended until the date five years after Woodruff Utility commences providing
23 wastewater utility service to its first customer.

24 **CONCLUSIONS OF LAW**

25 1. Woodruff Water is a public service corporation within the meaning of Article XV of
26 the Arizona Constitution and A.R.S. §§ 40-252, 40-281, and 40-282.

27 2. Woodruff Utility is authorized, pursuant to a CC&N, to operate as a public wastewater
28 treatment utility in the area known as the Sandia parcel.

3. The Commission has jurisdiction over Woodruff Water and Woodruff Utility and the subject matter of their requests to modify compliance requirements established by Decision No. 68453 and modified by Decision No. 72729

4. The actions described in Findings of Fact No. 18, 19, and 20 are just and reasonable and in the public interest and should be followed.

ORDER

IT IS THEREFORE ORDERED that the requirement for Woodruff Utility Company, Inc. to file reports concerning progress toward the use of effluent is hereby suspended until such time as development has commenced in the Sandia parcel and Woodruff Utility Company, Inc. has commenced providing wastewater service to its first customer.

IT IS FURTHER ORDERED that Woodruff Water Company, Inc. is hereby granted an extension of time, until the date five years after Woodruff Water Company, Inc. commences providing water utility service to its first residential customer within a newly developed residential subdivision in the Sandia parcel, to file with the Commission's Docket Control, as a compliance item in this docket, an application for a permanent rate case.

IT IS FURTHER ORDERED that Woodruff Utility Company, Inc. is hereby granted an extension of time, until the date five years after Woodruff Utility Company, Inc. commences providing wastewater utility service to its first customer, to file with the Commission's Docket Control, as a compliance item in this docket, an application for a permanent rate case.

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1 IT IS FURTHER ORDERED that all other requirements of Decision No. 68453 shall remain
2 in effect, as discussed herein.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

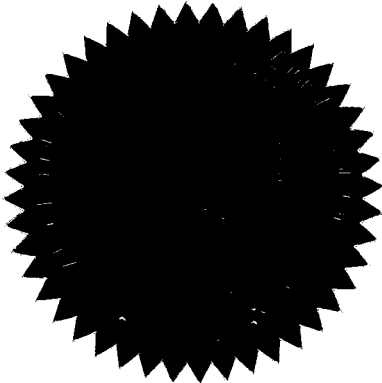
5 
6 CHAIRMAN LITTLE

7 
8 COMMISSIONER STUMP


9 
10 COMMISSIONER FORESE

11 
12 COMMISSIONER TOBIN

13 
14 COMMISSIONER BURNS



15 IN WITNESS WHEREOF, I, JODI A. JERICH, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 19th day of September 2016.

20 
21 JODI A. JERICH
22 EXECUTIVE DIRECTOR

23 DISSENT _____

24 DISSENT _____
25 SNH:aw(rt)

SERVICE LIST FOR:

WOODRUFF WATER COMPANY, INC.;
WOODRUFF UTILITY COMPANY, INC.; AND
ARIZONA WATER COMPANY

DOCKET NOS.:

W-04264A-04-0438, SW-04265A-04-0439, and W-
01445A-04-0755

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